be facts shewing it would be more just not to allow the costs to follow the event, as for example, oppression or misconduct of either of the parties by which costs have been unnecessarily increased." In this case from the agreed bundle of correspondence put in, there is nothing to show that the defendants admitted liability. No authority has been cited to show clearly that a party should not be awarded costs for refusal to be medically examined by a specialist selected from the other party. I therefore am of the opinion that costs in this case should follow the event.

I therefore give judgment for plaintiff as follows:—

(a) Special damage $400.

(b) General damage $20,000.

(c) Costs.

Judgment accordingly.

Solicitors: *S. M. Yong & Co.; Bannon & Bailey.*

Re ss.177 & 240, Land Code; HEW KEE YIN, Applicant

[O.C.J. (Suffian J.) May 15, 1962]

[K.L. — Originating Summons No. 45 of 1962]

Land Laws — Attestation — Land Code (Cap. 138), ss.177(f) and 240 — Execution of memorandum of transfer in China — Whether properly attested — Attestation of Registrable Instruments Act, 1960, s.3(1)(j).

Practice and Procedure — Declaration by Originating Summons — R.S.C., 1957, O.54A.

This was an application under O.54A for an order that the Memorandum of Transfer executed by one Kok Chow Siew (f) in China and attested to by the Notary Public, Peoples Court, Chau-liang District may be construed and determined as properly executed and attested as required under the Land Code and that the Collector of Land Revenue, Kuala Lipis do accept the said Memorandum of Transfer and register the name of Hew Kee Yin, the son of Kok Chow Siew as proprietor of the land in place of the said Kok Chow Siew, the present proprietor.

Held: the Memorandum was not properly attested because it had not been signed in front of the attestor. In any event it was impossible for this instrument to be attested in this case because there is no diplomatic officer of the Federation in China and no person has been approved in that behalf by the Ruler in Council or the Governor in Council.

ORIGINATING SUMMONS.

K. L. Devaser for the applicant.

Ismi bin Ismail (Federal Counsel) for the Commissioner of Lands.

Cur. Adv. Vult.

Suffian J.: This is an application by originating summons under Order 54A for an order —

(1) that the Memorandum of Transfer executed by Kok Chow Siew (f) in China and attested by the Notary Public, People's Court, Chau-liang District, China, may be construed and determined as properly executed and attested as required by the Land Code (Cap. 138); and

(2) that the Collector of Land Revenue, Kuala Lipis, do accept the said Memorandum of Transfer and register the name of Hew Kee Yin the applicant as the proprietor of the land comprised in Extracts of Mukim Register Nos. 645, 646 and 647, Lots Nos. 720, 665 and 722 respectively, Mukim and District of Kuala Lipis, in place of Kok Chow Siew (f) the present proprietor.

When this first came before me on April 9, 1962 I directed that the Commissioner of Lands be served with the summons. On April 23, 1962 when it was resumed he was represented by Inche Ismi bin Ismail, Federal Counsel.

Kok Chow Siew, the present registered proprietor of the lands concerned, was and is in China and she wanted and wants to transfer the lands to her son in Kuala Lipis. According to the affidavit of her son the applicant, she executed in 1957 before Merdeka Day a Memorandum of Transfer. According to section 177(f) of the Land Code which applied then, her signature should have been attested by "a British consular officer; or any person approved in that behalf by the Chief Secretary." According to section 3(1)(j) of the Attestation of Registrable Instruments Act, No. 1 of 1960 which came into force on 5th May, 1960, and which, in my view, now governs this application, the mother's signature should have been attested "by a diplomatic officer of the Federation, or any person or class or description of persons approved in that behalf by the Ruler in Council or the Governor in Council". The exhibits attached to the summons do not in my view include a Memorandum of Transfer duly executed by the mother, but even assuming that there was such a Memorandum of Transfer, I do not think that I could declare that her signature on it has been properly attested. Her signature, according to the son's affidavit, was attested by two Notaries Public of the People's Court, Chau-liang District, China. Their seals were certified by the Notary Public Attorney-General, Judicial Ministry, Office of Notary Public Attorney, China, whose seal in turn was certified by the Counsellor of the Consular Department, Ministry of Foreign Affairs, the People's Republic of China. These documents were then produced to the Attache of the Office of Her Britannic Majesty's Charge d'Affaires, Peking, who on 20th March, 1957, authenticated the signature and seal of the Counsellor of the Consular Department of the Ministry of Foreign Affairs of the People's Republic of China.

In my view, for this Memorandum to have been properly attested the mother should have signed it in front of the attestor, whoever he may be. She had not done so.

As there is no diplomatic officer of the Federation in China and as no person has been approved in that behalf by the Ruler in Council or the Governor in Council in China, it is in any event impossible for this instrument to be attested in this case. This no doubt causes hardship to the mother, but my view of the law is clear (this instrument has not been properly attested) and I must apply the law regardless of the hardship caused to her.

In the circumstances I must with regret decline to make the order applied for.

In view of my conclusion on the merits of this application, it is unnecessary to deal with the technical objections made by Inche' Ismi on behalf of the Commissioner of Lands.

Application refused.

Solicitors: *K. L. Devaser & Co.*

Re HILLMAN MINX NO. SU 3503

[O.C.J. (Adams J.) February 8, 1962]

[Muar — Originating Motion No. 1 of 1962]

Forfeiture — Vehicle of innocent person used in connection with an offence.

In this case a person who subsequently pleaded guilty to attempted kidnapping and unlawful possession of a firearm, hired a motor car from a self-drive firm. The motor car itself was under hire-purchase agreement. When the accused was arrested he took the police to the motor car and under the seat a pistol was found. At the end of the subsequent proceedings against the accused for unlawful possession of the firearm the learned President ordered the confiscation of the motor car without having heard either the owner of the motor car or the hire-purchase firm. On an application to set aside the order it was urged for the applicant, *inter alia*, (a) an innocent party should not be penalised by having his property declared forfeit through the fault of another, (b) before the order of forfeiture is made the owner should be called upon to show cause and given opportunity to do so.

Held: (1) as the motor car in this case was the property of a completely innocent person to whom no knowledge of the offence could be attributed, an order for forfeiture should not have been made;

(2) in order to ascertain whether the owner of the motor car was innocent it was necessary that he should be called upon to show cause;

(3) as this course was not adopted by the learned President the order of forfeiture was wrongly made and must be set aside.

Case referred to:—

(1) *Cheng Kee Huat & Anor.* v. *Public Prosecutor* [1948] M.L.J. 53.

ORIGINATING MOTION.

K. E. Hilborne for the applicant.

Hamzah bin Dato Abu Samah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Adams J.: This was an application by Mr. K. E. Hilborne of counsel on behalf of Lombard Acceptance Malaya Limited praying that the Order of the learned President of the Sessions Court at Muar forfeiting a Hillman Minx Motorcar No. SU 3503 be set aside.

Mr. Hilborne made three points. Firstly, the vehicle had not been used for the commission of any offence. Secondly, that in any event an innocent party should not be penalised by having his property declared forfeit through the fault of another. And thirdly, before an order of forfeiture is made the owner should be called upon to show cause and given an opportunity to do so.

The brief facts were that a person who subsequently pleaded guilty to attempted kidnapping and unlawful possession of a firearm, hired the motor car from a self-drive firm. The motor car itself was under hire-purchase agreement between the sister of the proprietor of the self-drive hire firm and the applicant. On the arrest of the accused in a hotel in Batu Pahat he took the Police to the motor car which was standing outside the hotel and under the seat a pistol was found. At the end of the subsequent proceedings against the accused for unlawful possession of the firearm the learned President ordered the confiscation of the motor car without having heard either the owner of the motor car or the hire-purchase firm.

Because of my views on the second and third of Mr. Hilborne's submissions I do not propose to say anything on the first. On the authority of *Cheng Kee Huat & Anor.* v. *Public Prosecutor* [1] I do not think that where a motor car, the property of a completely innocent person is being used in connection with an offence of which no knowledge can be attributed to such person, that an order of forfeiture should be made. In order to ascertain whether the owner of the motor car is innocent it is necessary that he should be called upon to show cause before any order of forfeiture is made. This course was not adopted by the learned President and that in my opinion is sufficient to say that the order of forfeiture was wrongly made and must be set aside. I understand that the vehicle has since been auctioned and sold. If that is correct, any such sum as was realised by the auction should be handed over to the applicant.

Application granted.

Solicitors: *Hilborne, Chung & Co.*

TAN AH HOONG v. MAHALINGAM

[O.C.J. (Suffian J.) February 12, 1962]

[K.L. — Civil Suit No. 528 of 1959]

Damages — Fatal accident — Contributory negligence — Funeral expenses incurred voluntarily by friends and relatives — Moral obligation to repay.

In this case the defendant's car collided with a trishaw ridden by the plaintiff's husband (aged 35) thereby causing his death. The defendant was accelerating, but he is not certain whether he had changed into top gear before the collision, but he mentioned that he was not travelling fast. Brake marks left by the off side and near side wheels on the dry road were 60 and 53 feet long respectively. The deceased was thrown forward 14 ft. and the trishaw was thrown forward 39 ft. The defendant also stated that he did not take into consideration the fact that the deceased might enter the major road suddenly. The following questions were raised: (1) was the defendant negligent in colliding with the trishaw and causing the death of the deceased, (2) was the deceased guilty of contributory negligence, and (3) what was the quantum of damages payable by the defendant if he was liable in whole or in part.